

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(LAND DIVISION)

IN THE MATTER of Section 450 of the Cook
Islands Act 1915

AND

IN THE MATTER of the land known as
KAOREI SECTION 14H,
NGATANGIA

AND

IN THE MATTER of an application by
MOUPARAU TARUIA for
and on behalf of the
KURIKURI FAMILY to
revoke the Succession
Orders made on 7 August
1978, 16 August 1978 and
12 June 1995 to **KOMERA**

Mrs Browne for the Applicants
Mrs Francis for the Respondents
Date of Judgment: 7 day of April 1997

JUDGMENT OF DILLON J.

This is an application pursuant to Section 450 of the Cook Islands Act 1915 to revoke certain Succession Orders made on 7 August 1978; 16 August 1978; and 12 June 1995 upon the grounds that such Succession Orders have been made in error.

Very comprehensive submissions have been prepared by both Counsel and these have been of material assistance to the Court in tracing the historical events surrounding the Succession Orders and in reaching a resolution of the serious conflict of evidence that has now become apparent.

Mrs Browne, for the Applicants, identifies the twelve original owners vested with this land by the Order of Investigation of Title dated 8 July 1908 as follows - Owners 1 and 2 were husband and wife; Owners 3, 4, 5, 7, 8, 9 and 10 were that couple's children; Owner 6 was the aunt of Owner 1; Owner 11 was not directly related to the Kurikuri family; and Owner 12, it is conceded, was a name that does not show on the Kurikuri genealogy.

On that basis Mrs Browne claims that this land is therefore Kurikuri land because of the ownership of all the owners other than Owners 11 and 12 referred to above, but the association of Komera No. 12 with the Kurikuri family justifies, so she says, referring to her as Komera Kurikuri. The purpose of this reference is to distinguish Komera Ti Kairangi and other Komera to whom the Respondents have relationship and to whom the Appellants concede that the Respondents are entitled to succeed to - but not to succeed to Komera Kurikuri. The Komera to whom the Respondents are entitled to succeed was the daughter of Ti Kairangi and Puaia.

For this distinction Mrs Browne relies on reference to Minute Book 9/219 and 237 which states that on 5 July 1922 and 10 July 1922 respectively the genealogy recorded therein shows Komera as the daughter of Ti Kairangi and Puaia.

The resolution of this case therefore comes down to the identification of Komera in the title of Koro Section 14H block. Mrs Browne concedes that the Respondents are entitled to the interests in the lands of Komera Ti Kairangi but they have no entitlement in the lands of Komera Kurikuri.

In this connection Mrs Browne refers to another block, Putu-i-Tapae Section 188G. An order was made determining the relative interests of that land made on 1 December 1981 (MB 50/34). She submits -

"Of significance is that Komera Ti Kairangi herself is not on the original order. Her children and grandchildren are listed on the title. Komera Ti Kairangi was therefore not alive in 1908. If the Respondents claim is correct, how is it that Komera Ti Kairangi is an owner in Ngatangia and not in Avarua."

She implies from that submission that because the Order of Investigation of Title for the land in dispute is dated 8 July 1908; because Komera Ti Kairangi is not shown on the Putu-i-Tapae

Section 188G title, but her children and grandchildren are so listed on that title; therefore Komera Ti Kairangi was deceased in 1908, but Komera Kurikuri who is shown as an owner on Kaorei Section 14H was alive in 1908. While that assumption may or may not be correct, it is a factor the Court must take into account in trying to determine the identity of the Komera in this land.

Mrs Francis, in her carefully prepared submissions, stated as follows :

"My search of the Court records and archives confirmed our succession to Komera. The genealogy obtained from archives showed Komera as being the daughter of Rangi, while the Minute Book 27/56-57 shows Komera as the sister of Rangi."

However there does appear to be a notation "(incorrect)" on the archives genealogy beside the name Komera.

It is true that reference to Minute Book 27/56-57 does record Komera as a sister of Rangi Kurikuri in the general evidence submitted by Vaarua Puri Moate, but is not recorded as such in the subsequent genealogy. Thus this Minute Book reference is not confirmation of genealogy as such. The other claim of "Komera as being the daughter of Rangi", even though recorded in the archives, cannot be sustained and is therefore abandoned by Mrs Francis. She also referred to the number of meetings convened since 1970 for the distribution of this land, and that while ^{dis}the satisfaction had been expressed by some members of the Kurikuri families, this present application has been subject to an inordinate delay which she suggests implies a lack of substance.

It is of course correct for Mrs Francis to submit that only oral submissions support the present application - that is, there are no recorded genealogies of Komera Kurikuri but there are of Komera Ti Kairangi. Mrs Francis put it this way.

"The genealogies of both lands presented in the Succession Order application made in the 1960's were based on oral submissions. There does not appear to be a minute book reference which shows the complete genealogy showing the relationship between all of the owners listed in the title."

When she refers to both lands she is relating to Kaorei Section 14H and Taakarua 17N. But Mrs Browne, in referring to the latter block which is not included in this present application, identifies the original 15 owners as follows :

"The landowners in this land are almost the same as that for Kaorei Section 14H Ngatangia except for the additional persons.

- 9 Kurapare f.a. (wife of Tangi Akarere)
- 11 Tuaeu m.a. (husband of Matanoanoa)
- 12 Pekamu m.a. (husband of Parengaakaea)
- 13 Kairenga m.a. (husband of Ngatungane)

The land therefore seems to have invested in Rangi Kurikuri and her husband and their children and their wives and husbands. Rangi Kurikuri's aunty, Akimano, is also on the title."

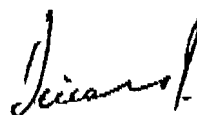
CONCLUSION

Mrs Francis has not challenged the submission made by Mrs Browne that :

"There is no connection between Ngati Kurikuri and Komera Ti Kairangi."

In all the evidence and the minute books referred to me I am unable to find any such relationship or connection. Indeed Mrs Francis makes no claim to such a relationship. There are ample genealogical references to Mrs Francis herself and the members of the families that she represents being related to the Komera of Ti Kairangi - but not to the Ngati Komera family.

I am satisfied therefore that an error did occur in connection with the three Succession Orders made on 7 August 1978, 16 August 1978 and 12 June 1995. The circumstances are such that it is easy to see how that error occurred, especially when no-one at the time objected to the applications. Those Orders are hereby revoked.



Dillon J.